S.B. CIVIL WRIT PETITION NO.1400/2004

Smt. Jhasoda Devi & Ors. vs. Shri Chamunda Mata Mandir Trust and others.

Date : 14.12.2004

HON'BLE MR. PRAKASH TATIA, J.

Mr. Om Mehta, for the petitioners.

Mr. J.P. Chhangani, for the respondents.

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Heard learned counsel for the parties.

It appears that on 8.12.2003, the defendants completed examination-in-chief of D.W.2 Jashoda but time was sought by counsel for the plaintiff and, therefore, the cross examination of the defendants' witnesses was not completed. On request of the plaintiff, the case was adjourned to 9.1.2004.

On 9.1.2004, the evidence of defendants' witnesses D.W.2 Jashoda was completed. The defendants sought one opportunity to produce one witness only which was allowed by the trial court vide order dated 9.1.2004 and the case was fixed for evidence of defendant on 6.2.2004.

On 6.2.2004, the trial court closed the evidence of the defendants.

The petitioners by this writ petition submits that the petitioners' witness was sick on 6.2.2004, therefore, the petitioners could not produce the witness. The petitioners placed on record certain medical bills in support of his contention that the the defendants' witness was sick on 6.2.2004.

Learned counsel for respondents submits that the petitioners were given opportunity to produce the witnesses but they failed to produce the witnesses and they could not disclose sufficient reason for adjourning the case for producing the

witness.

After going through the facts of the case, it is clear that on 9.1.2004, the evidence of defendants' witness was complete, so far as D.W.2 is concerned. The Trial Court accepted the prayer of the petitioners for permitting him to produce one more witness. On the next day, the evidence of the defendants was closed. The trial court could have adjourned the case even for next day only so that the petitioners could have produce the witness.

In view of the above, it will be just and proper to grant one last opportunity to the petitioners to produce one witness suo motu in the trial court on the next date fixed by the trial court. Learned counsel for the respondents submit that the counsel for the plaintiff will not seek adjournment and try to get the cross examination completed on the same day, if possible.

Consequently, this writ petition is allowed and the order dated 6.2.2004 (Annex.6) is set aside and the petitioners shall have one opportunity to produce only one witness on the next day which is already fixed in the trial court. The petitioners are permitted to produce one witness on payment of costs of Rs.1,000/-.

(PRAKASH TATIA), J.

S.Phophaliya